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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13  
14 SANDY VASQUEZ,

15 Plaintiff,

16 v.

17 VMWARE, INC.,

18 Defendant.

Case No. 5:19-cv-02182-NC

**VMWARE, INC.'S ANSWER TO  
COMPLAINT**

Magistrate Judge: Nathaneal M. Cousins

Action Filed: April 23, 2019

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Defendant VMware, Inc. (“Defendant”), hereby answers Plaintiff Sandy Vasquez’s (“Plaintiff”) Complaint, Defendant admits, denies, and alleges as follows:

## **SUMMARY OF THE CLAIMS**

1. Defendant answers that the allegations in Paragraph 1 of the Complaint consist of legal conclusions and argument to which no response is required; thus, they are denied. To the extent a response is required, Defendant denies each and every remaining allegation contained in Paragraph 1 of the Complaint. Defendant specifically denies that this case is maintainable as a class action.

9        2.      Defendant admits that it is an American technology company and provides  
10 compute and cloud software. Defendant denies that it refused to hire individuals with federal  
11 work authorization unless they are U.S. citizens, permanent residents or have a transferable visa.  
12 Defendant further denies that it has a policy or practice in violation of the Civil Rights Act, section  
13 2699(a) of California's Private Attorney's General Act, and or California Labor Code  
14 section 1019.1. Except as admitted, Defendant denies each and every remaining allegation  
15 contained in Paragraph 2 of the Complaint.

## PARTIES

17       3.     Defendant lacks information to admit or deny that Plaintiff is a resident of New  
18     York and on that basis denies the allegation. Defendant further lacks information to admit or deny  
19     that Plaintiff has bachelor's degree in Information Systems and Technology from Bellevue  
20     College. Defendant further lacks information to admit or deny that Plaintiff is federally authorized  
21     to work in the United States under Deferred Action for Childhood Arrivals ("DACA"), and she  
22     has an employment authorization document ("EAD") that evidences her authorization to work.

23       4.      Defendant admits it is an American technology company and provides compute and  
24 cloud software. Defendant admits it is headquartered in Pala Alto, California. Except as admitted,  
25 Defendant denies and every remaining allegation contained in Paragraph 4 of the Complaint.

## **JURISDICTION AND VENUE**

27       5.      The allegations in Paragraph 5 of the Complaint constitute legal conclusions and,  
28 therefore, no response is required. To the extent a response is required, Defendant admits that the

United States District Court for the Northern District of California has federal question jurisdiction over claims arising under 42 U.S.C. § 1981 and supplemental jurisdiction of claims arising under California Labor Code sections 2699 and 2699.3 pursuant to 28 U.S.C. § 1337.

4           6. The allegations in Paragraph 6 of the Complaint constitute legal conclusions and,  
5 therefore, no response is required. To the extent a response is required, Defendant denies the  
6 allegations.

7       7. The allegations in Paragraph 7 of the Complaint constitute legal conclusions and,  
8 therefore, no response is required. To the extent a response is required, Defendant denies the  
9 allegations.

## BACKGROUND

11       8.       The allegations in Paragraph 8 of the Complaint constitute legal conclusions and,  
12 therefore, no response is required. To the extent a response is required, Defendant denies the  
13 allegations.

14       9.      Defendant lacks information to admit or deny the date and scope of any  
15 announcement by President Barack Obama regarding DACA, and on that basis denies. The  
16 remaining allegations in Paragraph 9 of the Complaint constitute legal conclusions and, therefore,  
17 no response is required.

18        10.      Defendant lacks information to admit or deny that total number of DACA  
19 recipients, and on that basis denies the allegations in paragraph 10.

## **STATEMENT OF FACTS**

21        11.      Defendant lacks information to admit or deny each and every allegation in  
22 Paragraph 11, and on that basis denies.

23        12. Defendant lacks information to admit or deny each and every allegation in  
24 Paragraph 12, and on that basis denies.

25        13. Defendant lacks information to admit or deny each and every allegation in  
26 Paragraph 13, and on that basis denies.

27 14 Defendant denies each and every allegation in Paragraph 14 of the Complaint.

15. Defendant denies the allegations in Paragraph 15.

1       16.     Defendant denies each and every allegation in Paragraph 16.

2       17.     The allegations in Paragraph 17 of the Complaint constitute legal conclusions and,  
3 therefore, no response is required. To the extent a response is required, Defendant denies the  
4 allegations.

#### 5                   **CLASS ACTION ALLEGATIONS**

6       18.     Paragraph 18 of the Complaint consists of legal conclusions and argument which  
7 do not require a response. To the extent a response is required, Defendant denies each and every  
8 allegation contained in Paragraph 18. Defendant specifically denies that this case is maintainable  
9 as a class action.

10      19.     Paragraph 19 of the Complaint consists of legal conclusions and argument which  
11 do not require a response. To the extent a response is required, Defendant denies each and every  
12 allegation contained in Paragraph 19. Defendant specifically denies that this case is maintainable  
13 as a class action.

14      20.     Paragraph 20 of the Complaint consists of legal conclusions and argument which  
15 do not require a response. To the extent a response is required, Defendant denies each and every  
16 allegation contained in Paragraph 20. Defendant specifically denies that this case is maintainable  
17 as a class action.

18      21.     Paragraph 21 of the Complaint consists of legal conclusions and argument which  
19 do not require a response. To the extent a response is required, Defendant denies each and every  
20 allegation contained in Paragraph 21. Defendant specifically denies that this case is maintainable  
21 as a class action.

22      22.     Paragraph 22 of the Complaint consists of legal conclusions and argument which  
23 do not require a response. To the extent a response is required, Defendant denies each and every  
24 allegation contained in Paragraph 22. Defendant specifically denies that this case is maintainable  
25 as a class action.

26      23.     Paragraph 23 of the Complaint consists of legal conclusions and argument which  
27 do not require a response. To the extent a response is required, Defendant denies each and every  
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1 allegation contained in Paragraph 23. Defendant specifically denies that this case is maintainable  
2 as a class action.

3       24. Paragraph 24 of the Complaint consists of legal conclusions and argument which  
4 do not require a response. To the extent a response is required, Defendant denies each and every  
5 allegation contained in Paragraph 24. Defendant specifically denies that this case is maintainable  
6 as a class action.

7       25. Paragraph 25 of the Complaint consists of legal conclusions and argument which  
8 do not require a response. To the extent a response is required, Defendant denies each and every  
9 allegation contained in Paragraph 25. Defendant specifically denies that this case is maintainable  
10 as a class action.

11       26. Paragraph 26 of the Complaint consists of legal conclusions and argument which  
12 do not require a response. To the extent a response is required, Defendant denies each and every  
13 allegation contained in Paragraph 26. Defendant specifically denies that this case is maintainable  
14 as a class action.

## **FIRST CLAIM FOR RELIEF**

## ***Private Attorney General Act***

*(California Labor Code §§ 2698, et seq.)*

18       27. To the extent the facts incorporated by Paragraph 27 of the Complaint are admitted  
19 above, they are admitted here, and to the extent they are denied above, they are denied here. To  
20 the extent no response is required, the same is repeated here. To the extent any other response is  
21 required, Defendant denies the allegations.

22        28. Defendant denies each and every allegation contained in Paragraph 28 of the  
23 Complaint. To the extent Paragraph 28 consists of legal conclusions and argument, it does not  
24 require a response.

25        29. Defendant denies each and every allegation contained in Paragraph 29 of the  
26 Complaint.

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30. Defendant denies each and every allegation contained in Paragraph 30 of the  
Complaint. To the extent Paragraph 30 consists of legal conclusions and argument, it does not  
require a response.

4       31.     Defendant admits that on March 25, 2019, Defendant entered into an agreement  
5 with Plaintiff to toll the statute of limitations on Plaintiff's claims until April 24, 2019. each and  
6 every allegation contained in Paragraph 31 of the Complaint.

7       32. Defendant denies each and every allegation contained in Paragraph 32 of the  
8 Complaint. To the extent Paragraph 32 consists of legal conclusions and argument, it does not  
9 require a response.

10       33. Defendant denies each and every allegation contained in Paragraph 33 of the  
11 Complaint. To the extent Paragraph 33 consists of legal conclusions and argument, it does not  
12 require a response.

13       34. Defendant denies each and every allegation contained in Paragraph 34 of the  
14 Complaint. To the extent Paragraph 34 consists of legal conclusions and argument, it does not  
15 require a response.

## **SECOND CLAIM FOR RELIEF**

## **Alienage Discrimination**

(42 U.S.C. § 1981)

19       35. To the extent the facts incorporated by Paragraph 35 of the Complaint are admitted  
20 above, they are admitted here, and to the extent they are denied above, they are denied here. To  
21 the extent no response is required, the same is repeated here. To the extent any other response is  
22 required, Defendant denies the allegations.

23       36. Defendant denies each and every allegation contained in Paragraph 36 of the  
24 Complaint. To the extent Paragraph 36 consists of legal conclusions and argument, it does not  
25 require a response.

26       37. Defendant denies each and every allegation contained in Paragraph 37 of the  
27 Complaint. To the extent Paragraph 37 consists of legal conclusions and argument, it does not  
28 require a response.

38. Defendant denies each and every allegation contained in Paragraph 38 of the  
2 Complaint. To the extent Paragraph 38 consists of legal conclusions and argument, it does not  
3 require a response.

4           39.     Defendant denies each and every allegation contained in Paragraph 39 of the  
5 Complaint. To the extent Paragraph 39 consists of legal conclusions and argument, it does not  
6 require a response.

7       40.     Defendant denies each and every allegation contained in Paragraph 40 of the  
8 Complaint. To the extent Paragraph 40 consists of legal conclusions and argument, it does not  
9 require a response.

10       41. Defendant denies each and every allegation contained in Paragraph 41 of the  
11 Complaint. To the extent Paragraph 41 consists of legal conclusions and argument, it does not  
12 require a response.

13       42. Defendant denies each and every allegation contained in Paragraph 42 of the  
14 Complaint. To the extent Paragraph 42 consists of legal conclusions and argument, it does not  
15 require a response.

16       43. Defendant denies each and every allegation contained in Paragraph 43 of the  
17 Complaint. To the extent Paragraph 43 consists of legal conclusions and argument, it does not  
18 require a response.

19       44. Defendant denies each and every allegation contained in Paragraph 44 of the  
20 Complaint. To the extent Paragraph 44 consists of legal conclusions and argument, it does not  
21 require a response.

## JURY DEMAND

Plaintiff's jury demand is not an allegation and does not require a response. To the extent any part of Plaintiff's prayer for relief constitutes an allegation, Defendant denies each and every allegation contained therein.

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## **PRAAYER FOR RELIEF**

Plaintiff's prayer for relief is not an allegation and does not require a response. To the extent any part of Plaintiff's prayer for relief constitutes an allegation, Defendant denies each and every allegation contained therein.

## AFFIRMATIVE DEFENSES

## **FIRST AFFIRMATIVE DEFENSE**

### (Statute of Limitations)

8           1. The Complaint, and each and every purported cause of action alleged therein, is  
9 barred by the applicable statutes of limitations, including but not limited to, California Code of  
10 Civil Procedure §§338, 340, and 343; 28 USC § 1658(a); 29 U.S.C. § 255; and 42 U.S.C. § 2000e-  
11 5(e)(1).

## **SECOND AFFIRMATIVE DEFENSE**

(Failure to State a Cause of Action)

14       2. The Complaint, and each and every purported cause of action alleged therein, fails  
15 to state facts sufficient to constitute a cause of action against Defendant under California Private  
16 Attorney General Act, the California Labor Code, the Civil Rights Act of 1866, or other  
17 provisions of law or contract.

### **THIRD AFFIRMATIVE DEFENSE**

### (Failure to Exhaust)

20       3.       The Complaint, and each and every purported cause of action alleged therein, is  
21 barred, in whole or in part, because Plaintiff failed to timely and completely exhaust her requisite  
22 administrative and/or contractual remedies available to her under the California Private Attorney  
23 General Act, the California Labor Code, the Civil Rights Act of 1866, or other provisions of law  
24 or contract prior to commencing this action.

#### **FOURTH AFFIRMATIVE DEFENSE**

### (Inadequacy of Class Representative)

27       4.     Defendant is informed and believes, and based upon such information and belief  
28     alleges, that Plaintiff is not a proper or adequate representative of the class she purports to

represent and, accordingly, this action is not properly brought as a class action.

#### **FIFTH AFFIRMATIVE DEFENSE**

### (Lack of Superiority)

4           5. Defendant is informed and believes, and based upon such information and belief  
5 alleges, that the class action procedure is not the superior method for adjudicating Plaintiff's  
6 claims or the claims of the putative class and, accordingly, this action is not properly brought as a  
7 class action.

#### **SIXTH AFFIRMATIVE DEFENSE**

#### (Lack of Standing)

10       6.      Defendant is informed and believes, and based upon such information and belief  
11 alleges, that Plaintiff lacks standing to assert each or any purported cause of action alleged in the  
12 Complaint and lacks standing to represent the putative class.

## **SEVENTH AFFIRMATIVE DEFENSE**

## (Private Attorneys General Act - Unconstitutional)

15       7.     Defendant alleges that the Complaint and each cause of action are barred because  
16 the Private Attorneys General Act, Labor Code section 2699 et seq. (“PAGA”) is  
17 unconstitutionally vague and overbroad as applied to the Complaint and circumstances of this  
18 case. Defendant further alleges that prosecution of a representative action on behalf of similarly  
19 situated employees under Labor Code section 2698, et seq., as applied to the Complaint and  
20 circumstances of this case, would constitute a denial of Defendant’s due process rights, both  
21 substantive and procedural, in violation of the Fourteenth Amendment of the United States  
22 Constitution. Further, the penalties sought in Plaintiff’s Complaint violate the Due Process and  
23 Separation of Powers Clauses of the United States and California Constitutions. *Lockyer v. R.J.*  
24 *Reynolds Tobacco Co.*, 37 Cal. 4th 707 (2005); *Ratner v. Chemical Bank New York Trust Co.*, 54  
25 F.R.D. 412 (S.D.N.Y. 1972).

## **EIGHTH AFFIRMATIVE DEFENSE**

(Laches)

28 8. The Complaint, and each and every purported cause of action alleged therein, is

1 barred by the doctrine of laches, in that Plaintiff unreasonably delayed in bringing the action  
2 because she did not act within a reasonable time, or otherwise reporting any alleged violation, and  
3 has unreasonably delayed in the filing of this lawsuit, causing Defendant to suffer prejudice.

4 **NINTH AFFIRMATIVE DEFENSE**

5 (Unclean Hands)

6 9. Defendant is informed and believes, and based upon such information and belief  
7 alleges, that the Complaint, and each and every purported cause of action alleged therein, is barred  
8 by the doctrine of unclean hands.

9 **TENTH AFFIRMATIVE DEFENSE**

10 (Waiver)

11 10. Defendant is informed and believes that Plaintiff and/or the putative class have  
12 waived some or all of the purported causes of action alleged in the Complaint by virtue of their  
13 prior representations, actions and/or inaction with respect to the claims made in the Complaint.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 (Estoppel)

16 11. The Complaint and each cause of action set forth therein are barred by the doctrine  
17 of estoppel.

18 **TWELFTH AFFIRMATIVE DEFENSE**

19 (Consent)

20 12. Defendant alleges that a reasonable opportunity for investigation and discovery will  
21 reveal, that the Complaint and each cause of action set forth therein are barred by the doctrine of  
22 consent.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 (Justification)

25 13. Any acts alleged to have been committed by Defendant were committed in the  
26 exercise of good faith, with probable cause, were not arbitrary or capricious, were based upon  
27 legitimate factors, and were reasonable and justified under the circumstances.

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1                   **FOURTEENTH AFFIRMATIVE DEFENSE**

2                   (Adequate Remedy at Law)

3       14.      Defendant alleges that Plaintiff and/or the members of the putative class are not  
4      entitled to equitable relief insofar as they have adequate remedies at law.

5                   **FIFTEENTH AFFIRMATIVE DEFENSE**

6                   (Unknown Conduct/Outside Course and Scope of Employment)

7       15.      Defendant alleges that the Complaint and/or each purported cause of action therein  
8      cannot be maintained against Defendant because if anyone took the actions alleged, such actions  
9      were committed outside the course and scope of such employment and were not authorized,  
10     adopted or ratified by Defendant, and/or Defendant did not know of nor should it have known of  
11     such conduct.

12                  **SIXTEENTH AFFIRMATIVE DEFENSE**

13                  (Lack of Authorization and/or Ratification)

14       16.      Defendant did not authorize, direct or participate in any of the alleged wrongful  
15     conduct described in the Complaint. Any recovery on the Complaint, or on any purported cause  
16     of action asserted therein, is barred, in whole or in part, because Defendant did not aid, abet,  
17     counsel, encourage, authorize or ratify any of the alleged wrongful conduct described therein.  
18     Defendant reserve the right to amend and/or to supplement their allegations in support of this  
19     affirmative defense as they learn additional information through further investigation and  
20     discovery.

21                  **SEVENTEENTH AFFIRMATIVE DEFENSE**

22                  (Legitimate, Non-Discriminator Reasons)

23       17.      Defendant alleges that the Complaint, and each purported cause of action therein is  
24     barred in whole or in part because Defendant did not engage in the conduct attributed to it by  
25     Plaintiff. However, even assuming *arguendo* the actions alleged in Plaintiff's Complaint  
26     occurred, Defendant acted reasonably, with due care, and in good faith at all times material herein,  
27     based on relevant facts and circumstances known by it at the time it so acted, and all actions taken  
28     toward Plaintiff were for legitimate, good faith and non-discriminatory business reasons.

1                   **EIGHTEENTH AFFIRMATIVE DEFENSE**

2                   (Uncertainty)

3       18.      Defendant alleges the Complaint, and the claims asserted therein, are uncertain.

4                   **NINETEENTH AFFIRMATIVE DEFENSE**

5                   (Res Judicata, Bar and Merger)

6       19.      Defendant alleges the causes of action set forth in the Complaint and in each of the  
7      purported claims alleged therein are subject to the doctrine of *res judicata*.

8                   **TWENTIETH AFFIRMATIVE DEFENSE**

9                   (Collateral Estoppel)

10      20.     The Complaint, and each and every purported cause of action alleged therein, is  
11     barred, in whole or in part by the doctrine of collateral estoppel.

12                   **TWENTY-FIRST AFFIRMATIVE DEFENSE**

13                   (After-Acquired Evidence)

14      21.     Defendant is informed and believes, and based upon such information and belief  
15     alleges, that Plaintiff is barred, in whole or in part, from recovery of any damages based upon the  
16     doctrine of after-acquired evidence.

17                   **TWENTY-SECOND AFFIRMATIVE DEFENSE**

18                   (Mitigation of Damages)

19      22.     Defendant is informed and believes that, Plaintiff and members of the putative class  
20     have failed to exercise reasonable care to mitigate their damages, if any were suffered, and that  
21     their right to recover against Defendant should be reduced and/or eliminated by such a failure.

22                   **TWENTY-THIRD AFFIRMATIVE DEFENSE**

23                   (Violation of Due Process)

24      23.     Defendant alleges that certification of a class as applied to the facts and  
25     circumstances of this case, would constitute a denial of Defendant's due process rights, both  
26     substantive and procedural, in violation of the Fourteenth Amendment to the United States  
27     Constitution and the California Constitution. Defendant further alleges that the penalties Plaintiff  
28     demands are excessive and violate Defendant's due process rights in violation of the Fourteenth

1 Amendment to the United States Constitution and the California Constitution.

2 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

3 (Bad Faith)

4 24. Defendant alleges that a reasonable opportunity for investigation and discovery will  
5 reveal and, on that basis, alleges Plaintiff's claims are unreasonable and/or were filed in bad faith  
6 and/or are frivolous and, for that reason, justify an award of attorneys' fees and costs against  
7 Plaintiff and her attorneys.

8 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

9 (Lack of Specificity)

10 25. Defendant alleges Plaintiff has failed to allege special damages or any other  
11 damages with requisite specificity.

12 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

13 (Good Faith Dispute)

14 26. Defendant is informed and believes that further investigation and discovery will  
15 reveal, and on that basis alleges, that any violation of the Labor Code or an Order of the Industrial  
16 Welfare Commission was an act or omission made in good faith; that Defendant had reasonable  
17 grounds for believing that it complied with applicable laws.

18 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

19 (No Entitlement to Prejudgment Interest)

20 27. Defendant is informed and believes that further investigation and discovery will  
21 reveal, and on that basis alleges, that the Complaint fails to state a claim upon which prejudgment  
22 interest may be granted because the damages claimed are not sufficiently certain to allow an award  
23 of prejudgment interest.

24 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

25 (Avoidable Consequences)

26 28. Defendant is informed and believes that further investigation and discovery will  
27 reveal, and on that basis alleges, that the Complaint and each cause of action set forth therein, or  
28 some of them, are barred, in whole or in part, by the doctrine of avoidable consequences.

1                   **TWENTY-NINTH AFFIRMATIVE DEFENSE**

2                   (No Private Right of Action)

3       29. Defendant alleges that there is no private right of action to recover the penalties  
4 sought by Plaintiff and that Plaintiff has not complied with the procedural requirements for  
5 seeking any such penalties.

6                   **RESERVATION OF RIGHT TO AMEND ANSWER**

7       Defendant hereby gives notice that they intend to rely on such other and further defenses as  
8 may become available during discovery in this action and reserve the right to amend the Answer to  
9 assert any such defenses.

10                  **PRAYER**

11                  **WHEREFORE**, Defendant prays for judgment as follows:

- 12       1. That the Complaint be dismissed with prejudice in its entirety;  
13       2. That Plaintiff takes nothing by reason of the Complaint;  
14       3. That Defendant be awarded its costs of suit and reasonable attorneys' fees to the  
15 extent provided by law; and  
16       4. For such other and further relief as the Court may deem just and proper.

17  
18 Dated: October 31, 2019

19                   SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

21                  By

21                  */s/ Andrea L. Isaacs*

22                  PAUL S. COWIE  
22                  BROOKE PURCELL  
23                  ANDREA L. ISAACS

24                  Attorneys for Defendant VMware, Inc.

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